

To Senator Cohen:

Pardon me for not getting my comments to you in advance of the Public Hearing on SB 117. This proposed legislation covers a lot of ground that is of importance to me personally and in which I have had a professional role. As a piece of legislation, it was almost too large for me to comment on without first taking time for more detailed consideration. However, after having read the bill and the submitted written testimony as well as listened to most of the public hearing, I feel an obligation to forward to you my comments, late though they are. I send them to you, not only in your role as Co-Chair of the Environment Commitment, but also as you are my elected representative in the State Senate. I reside in your district, in Northford.

Let me start by describing my connection to the bill. It is basically two-fold. As a DEEP employee (I retired in 2020 after over 20 years of service), I had some involvement in the development of the process used by the agency to deal with a developing crisis with dead trees. Among my contributions, I was the primary author of a document included in the Tree Warden of Kent's testimony as "DEEP's Hazard Tree Removal Directive". In fact, the document is mislabeled, as it not a directive but simply instructions sent to DEEP field staff as to how to fill out the on-line app being used within DEEP to collect data, but more on that later. The development of this app was part of an effort to be proactive in responding to a large spike in tree mortality that was occurring, due mostly to two major insect outbreaks in the state. At the time, in my position as Urban Forestry Coordinator, I was working in close contact with municipal leaders and tree wardens from throughout the state, among others, as we all sought to deal with this developing crisis.

Secondly, outside my job with DEEP, I was and continue to be active as a member of the CT Tree Protective Association. For the past 25 years, I have been the organizer, administrator and an instructor in Arboriculture 101, the course offered by CTPA to those who wish to earn their CT Arborist License. To say that this course has been influential with respect to the licensing of arborists in Connecticut would be an understatement. Since its inception, in 1996, some 2,000 individuals have taken this 13-week course. Although not everyone who takes the course goes on to the licensing exam, perhaps half of the nearly 1,000 or so arborists licensed in Connecticut took this course as a step towards earning their license. This is strictly an estimate, as we have not attempted to track this information. We do know that we have been filling this course twice year, with a waiting list, since its inception. (Side note – I have seen several of my DEEP colleagues, including from the Parks Division, as students in this course over the years).

That is my background. I will now get to my comments. I will group them into three areas:

- A defense of the DEEP's response
- A few comments on the role that the Arborist License might play in this situation going forward
- My recommendations as to how this situation might best be dealt with

#### **A defense of DEEP's response.**

I read with great interest the Commissioner's testimony. I should say that at the outset that I retired from the agency in August 2020 and that I have no direct connection with the situation at Housatonic Meadows State Park. As alluded to, however, I was in the agency and had a role in how the basic

procedures were developed, as regards the process used by the agency to deal with this statewide wave of tree mortality.

The Commissioner says it correctly with regards to the significant increase in tree mortality. As it became apparent that this wave of tree mortality was occurring, there was widespread concern, not just within the agency. This is evidenced by this newspaper article from the Hartford Courant (9/27/2018): [Millions Of Connecticut Trees Have Been Killed Or Damaged In Recent Years. Taking Them Down Is Expensive. - Hartford Courant](#). Members of the legislature and municipal leaders from throughout the state, especially in eastern Connecticut, were very outspoken about this situation and the need for a response. DEEP was among the several groups that took this concern very seriously.

Some of the written testimony suggests that it was a fear of lawsuits that was motivating the agency. I cannot speak for what may or may not have been incentivizing those in positions of upper management within the agency. I do know that it was not the fear of being sued that motivated those of us at the field level. It was concerns about safety and human life. During my time in the agency, I was tangentially involved in the investigation of two fatalities that occurred on DEEP lands – one in a park and one in a campground. Both are terribly sad stories. Each were due to trees failing unexpectedly. I know from first-hand observation the anguish and regret that members of the field staff feel when such a tragedy happens on their watch. The motivation of the field staff is not fear of a lawsuit; it is genuine care for people and concern for their safety and well-being. Indeed, the crisis I have been describing was proving to be real. Already, there had been a fatality, of a logger who had been routinely working in the woods and was struck by a large dead limb from a recently insect-killed tree.

Much has been made in the testimony regarding the “ineptitude” of the DEEP staff, as one commentator put it. That statement is both harsh and ill-informed. This was from the same individual who, intentionally or not, misrepresented the instructions for filling out a survey form as a directive for removing trees. In fact, recording trees through the survey was intended to be only the first step in identifying trees of concern, which is why access to the survey form was widely distributed to agency field staff. The actual decision to remove trees was left to those who were in more senior positions and who had the years of experience needed to properly manage and maintain parks and campgrounds.

This is the one area where I would fault the Commissioner’s testimony. I feel that she could have done a better job of representing the professionalism and the competence of the individuals involved in the process, including in the decision-making. One does not become the Superintendent of a State Park or a Facilities Manager without having accumulated a broad range of experience that encompasses all aspects of the skills and background needed for the management of these properties. This would include a detailed understanding of the environmental, ecological and recreational priorities associated with the property and would include knowledge of trees, locally and generally, and of tree maintenance. Also, one does not reach a position such as these if she or he does not possess a high degree of personal dedication to the State Park or other state facility being managed. This would include a deep appreciation of and respect for what these properties are, why they were created and what they mean to other people in the state.

Which leads me to my second point.

**A few comments on the role that the Arborist License might play in this situation going forward**

The legislation specifically calls for a Connecticut licensed arborist to be involved in the decision-making process as relates to tree removals within each of the state's parks and campgrounds. While I find this proposed requirement well-meaning, I also find it to be off-target. I say this as someone who has spent years championing the importance of the state's arborist license and as one who has often said that DEEP should be doing more to promote this license and defend the interests of those who are licensed and seek to follow its rules.

However, in relation to this specific situation, one should take a close look at what the arborist license is, as defined by State Statute. First of all, it is essentially a commercial license – it is intended to regulate who can “advertise, solicit or contract” to do arboriculture for hire. Clearly, that does not define, for instance, a State Park Superintendent.

More to the point, though, is what state statute defines as arboriculture. The operative phrase in the statute is that it is work done to “improve the condition of ... trees” (Sec. 23-61a). Indeed, the focus of the statute is on arboricultural work that is being done in order to maintain a standing tree and keep it in a healthy and safe condition. The statute is effectively silent regarding tree removal.

It is reasonable to assume that someone who understands tree health along with tree care tools and techniques would then be a Tree Expert, as arborists were called in a version of the statute from nearly 100 years ago. However, that is not the same as saying that assessing the need for a tree to be removed is a skill that is strictly within the domain of licensed arborist. If one is to fairly debate the recommendation offered in the proposed legislation, this point needs to be made.

To take it a step further, if one were to look at positions in Connecticut that involve trees and that might be considered as analogous to being a park or campground manager, two stand out. The first is the role of utility vegetation manager. The second is the office of tree warden. In neither case does state law require that a person filling those positions hold an arborist license or seek the consultation of a licensed arborist.

In my personal opinion, the interpretation of the law is incorrect with regards to utility vegetation managers, although that is my opinion against that of two previous Attorneys General. With regards to tree wardens, it should be noted that, in 2013, the statutes regarding tree wardens were updated to include, for the first time, qualifications for those appointed as tree wardens or their deputies. At the time, the requirement that tree wardens be licensed arborists was debated and rejected by the legislature, with even the Tree Wardens Association coming out against that specific proposal. The arborist license was, however, included in the resulting law (Sec. 23-59a) as one way in which an individual could prove his or her qualifications to be a tree warden.

One more point before I leave this section – it has been argued in other circumstances that a contractor who is not a licensed arborist should not be allowed to recommend to a property owner that, based on a tree's condition, a tree be removed. The concern is that, under the statute, removal of the tree is the only recommendation that such a contractor would have the incentive to offer to the property owner. If the property owner consults with a licensed arborist and chooses to keep the tree standing, it is likely that the unlicensed contractor loses the work.

This is an interesting argument, but one that is irrelevant to this situation. Due to the nature of their job, a state parks or campground manager would have plenty of incentive to keep a tree if she or he

feels it is in good shape and worth keeping. He or she could even authorize that work be done to improve the condition of the tree without consultation with a licensed arborist, as another provision of the law allows that “any person may improve or protect any tree on such person’s own premises or on the property of such person’s employer without securing such a license...” (Sec. 23-61b).

### **My recommendations as to how this situation might best be dealt with**

At this point, I find that there is an important question to be raised. What is the exact nature of the problem that this bill is intended to solve? In reading the bill and the written testimony and after listening to much of the public hearing, it is unclear to me whether this bill is based on one situation in which, possibly, the decision-making apparatus of DEEP went awry and resulted in a poor outcome, or if the legislation is intended to address some broader, more fundamental flaw in the system. If it is the latter, there is very little information provided that would illustrate the nature of this broader problem. Is it statewide? Is it manifesting itself in a number of circumstances?

My experience is that broad, sweeping responses to fix problems that are of limited occurrence have the potential to create as much harm as good.

All of that said, good points are being made in the discussion. Trees are important for a whole variety of reasons. The importance of trees should require DEEP to be more transparent and forthcoming regarding its policies as relates to trees and the management of its parks and other recreational facilities. At the same time, to those who argue strenuously that this should include recognition of the environmental and ecological values of these trees, I would say (1) the decision-making process within DEEP already does that, whether or not that aspect of the decision-making process is well publicized, and (2) there are times when human safety and people’s lives need to be valued over immediate environmental gains.

Perhaps that is the point of this discussion – people do not feel that they know enough about what it is that DEEP does and how, in general, members of DEEP staff reach their decisions. People also may not have enough of an understanding of the constraints under which the agency operates and how those constraints enter into the process. Without these understandings, there is some sense of mistrust, as one speaker alluded to. I can understand that as an issue.

Another substantial point, also being raised, relates to the question as to whether DEEP management and staff are properly aware of and educated in the best approaches to be taken in a variety of circumstances, such as the situation being given particular attention in this case. Are the policies and procedures of the agency fully thought through and appropriately vetted, both by those within and outside of the agency?

In this letter, I have suggested that it is my view that the field staff, in the vast majority of cases, are well-equipped and well-trained to deal with the vast majority of situations that arise, including those relating to trees in state parks and campgrounds. I say that both as a former DEEP employee and, with reference to trees, as a licensed arborist and certified forester.

If asked as to whether this sense of confidence should be extended up all the way through the ranks of management, I would have to invoke the old cliché, that I would be getting involved in a discussion that is above my pay grade. I do think that it is reasonable that DEEP be required to demonstrate the training and policies that are in place that relate to the decision-making around individual tree care, tree

removals and tree safety policies. This would help maintain the integrity, internally, of a system that, in my opinion, works well because of the effort put into it by the people at the field staff level. It would also help to provide a uniform understanding of and fluency in what the key policy elements are, at all levels of the agency, and do so in a way that could facilitate communication of these policy elements to the outside world.

I would also note that the DEEP of Connecticut is certainly not the first governmental agency to find itself in this situation, regarding trees and safety in parks and campgrounds. For other agencies for DEEP to look to for guidance, I would suggest starting with the National Park Service (see for example: [Parkplanning - Hazard Tree Management Plan EA \(nps.gov\)](#)) and the US Forest Service: [stelpddb5332560.pdf \(usda.gov\)](#). Another publication that I am very familiar with, drawn from the urban forestry world but also relevant here, is the [Urban Tree Risk Management: A Community Guide to Program Design and Implementation | Publications | SRS \(usda.gov\)](#). This list could easily go on.

In addition, New England is home to some of the best educators and thought-leaders with regards to managing trees for safety and tree risk. In my opinion, DEEP should be taking advantage of these resources more than they do. It would not be difficult to generate a list of people from the region who are leaders in formulating tree policies and in providing training in the implementation of those policies. It may be time to provide some funding to DEEP to develop these policies and implement these trainings.

Senator Cohen, I have covered a lot of ground. However, I felt it was necessary to do so. My hope is the Environment Committee will come up with good recommendations for DEEP, including, if warranted, good legislation that will provide reasonable policy guidelines for the agency.

I do not think that the proposed legislation is there yet. I also think that DEEP leadership is in a better position now, than it was then, to think beyond its current policies and limitations and towards dealing in a more open manner with this very serious question of tree safety within our parks and campgrounds.

Respectfully,

Chris Donnelly  
Northford, CT  
February 28, 2022

DEEP Retired  
Connecticut Licensed Arborist  
ISA Certified Arborist  
Connecticut Certified Forester  
American Society of Consulting Arborists Registered Consulting Arborist  
Instructor in Urban Forestry at the University of Connecticut

Member of the Tree Wardens Association of Connecticut, the Connecticut Tree Protective Association, the International Society of Arboriculture and the Connecticut Urban Forest Council